

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Volume No. 338

July 2002

REMINDER OF ORDER OF BUSINESS

July

- 1 On or before this date the county treasurer shall certify a list of real estate delinquencies for tax sale. (IC 6-1.1-24-1)

On or before July 1 of each year, each county assessor shall certify to the county auditor the assessment value of the personal property in every taxing district. (IC 6-1.1-3-17)
- 2 On or before this date, the county auditor should receive County Form 144 from officers, boards, commissioners and agencies AStatement of Salaries and Wages Proposed to be Paid Officers and Employees.@(IC 36-2-5-4) The county auditor shall present these forms to the county executive at its July meeting. The county executive shall review and make its recommendations. Before August 20 the county executive shall present County Form 144 and its recommendations to the county fiscal body.
- 4 Legal Holiday - Independence Day (IC 1-1-9-1)
- 8 On or before this date make distribution of Dog Fund apportionment from Auditor of State - second Monday. (IC 15-5-9-11)

Distribute congressional interest to school corporations - second Monday. (IC 21-1-1-54)
- 15 In those counties participating in Public Employees=Retirement Fund, last day to make pension report and payment for the second quarter of 2002 to the Public Employees=Retirement Fund.
- 20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.
- 31 Last day to file quarterly unemployment compensation reports with Indiana Employment Security Division.

Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. (IC 6-1.1-23-1)

August

- 1 First day annual tax sale can be held. (IC 6-1.1-24-2(a)(9))
- 7 Last date for county officers and department heads to file the respective budget estimates with county auditor - Wednesday following first Monday in August. (IC 36-2-5-9)

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REMINDER OF ORDER OF BUSINESS
(Continued)

- 19 Last date for board of commissioners to review AStatements for Salaries and Wages Proposed to be Paid Officers and Employees@and to make its recommendations to the county council. (IC 36-2-5-4(b))
- 20 Last day to report and make payment of State and County Income Tax Withheld in the month of July to Indiana Department of Revenue.
- 21, 22,
- 23 County Treasurer-s Annual Conference – Adams Mark, Indianapolis, Indiana.
- 31 Last date for first publication of county budget (10 days prior to public hearing). (IC 6-1.1-17-3)

September

- 2 Legal Holiday - Labor Day. (IC 1-1-9-1)
- 7 Last date for second publication of county budget (7 days after the first publication and at least 3 days before public hearing). (IC 5-3-1-2)
- 10 Last date for budget public hearing (10 days prior to adoption). (IC 6-1.1-17-5(a))
- 19-20 Last date to comply with provisions of IC 36-2-5-11, AEach ordinance shall be read on at least two separate days before it-s final adoption.@

Last date for taxing officials to file copies of budgets and tax levy with county auditor for presentation to County Tax Adjustment Board. (IC 6-1.1-17-5(d))
- 20 Last date county council may meet to determine budgets and tax rates. (IC 6-1.1-17-5(a)(3))

Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.
- 22 First meeting of County Tax Adjustment Board, if applicable. (IC 6-1.1-29-4) (On September 22 or on first business day after, if September 22 is not a business day.)

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DISTRIBUTION OF COURT FEES (IC 33-19-7)

The following should help determine the correct percentage of court costs to be allocated to the City and Town Court Cost Fund. IC 33-19-7-1,2,3 states that 70% collected is state, 27% collected is county, and 3% collected is city and town court costs.

The Clerk of the Circuit Court retains the 70% state share and remits it semiannually to the Auditor of State. The remaining 30% collected for the county and city and town costs is forwarded monthly to the County Auditor. If the Clerk is reporting the Court Costs for the County General Fund and the City and Town Court Costs Fund separately there shouldn't be a problem. However, a problem or error may occur in calculating the apportionment between the County General Fund and the City and Town Court Cost Fund, if the Clerk reports court costs in total.

If the Clerk reports to the auditor in total the auditor will need to multiply court costs shown on the Monthly Report of Collection by 10% instead of 3%. Let us assume Court Costs in total equals \$100 and should be allocated to:

State	\$70.00
County	27.00
City	3.00

If the County Auditor uses 3% of the amount reported as Court Costs Due County on the Monthly Report of Collections, the City and Town Courts will be shorted by \$2.10, as shown in the following schedule:

	<u>City & Town Costs</u>	<u>County Costs</u>
Total on Report \$30.00		
\$30 x 3%	\$.90	
\$30 x 27%		\$29.10
 Total Collected \$100		
\$100 x 3%	<u>3.00</u>	
\$100 x 27%		<u>27.00</u>
 Differences	<u>(\$2.10)</u>	<u>\$2.10</u>

However, if the County Auditor multiplies the amount of Court Costs due the County by 10% he or she will obtain the correct amount due the City and Town Court Costs Fund, as shown in the following schedule:

Total on Report \$30.00		
\$30 x 10%	\$3.00	
\$30 x 90%		\$27.00
 Total Collected \$100		
	<u>3.00</u>	<u>27.00</u>
 Differences	<u>-0-</u>	<u>-0-</u>

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COUNTY SHERIFFS – INMATE TRUST AND JAIL COMMISSARY FUNDS

IC 5-13-6-1 states that all public funds paid into the treasuries of the respective political subdivisions shall be deposited not later than the business day following the receipt of funds in one or more depositories in the name of the political subdivision by the officer having control of the funds.

The sheriff is the officer of the county who has control of the inmate trust and commissary funds. Therefore, it is the audit position of this department that inmate trust and jail commissary funds should be deposited in the depository no later than the next business day after they are received.

Also, IC 36-8-10-21 states that the sheriff, or his designee, shall deposit all money from commissary sales into the fund, which he shall keep in a depository designated under IC 5-13-8.

TRAFFIC VIOLATIONS BUREAU

Any court may establish a traffic violations bureau and appoint a violations clerk who shall serve under the direction and control of the court. (IC 34-28-5-7)

The violations clerk or deputy violations clerk shall:

1. Accept:
 - A. Written appearances;
 - B. Waivers of trial;
 - C. Admissions of violations;
 - D. Declarations of nolo contendere for moving traffic violations;
 - E. Payments of judgments (including costs) in traffic violations cases; and
 - F. Deferral agreements and deferral program fees prescribed under IC 33-19-5-2 (e);
2. Issue receipts and account for any judgment (including costs) collected; and
3. Pay the judgments (including costs) collected to the appropriate unit of government as provided by law. (IC 34-28-5-8)

The court shall:

1. designate the traffic violations within the authority of the violations clerk, but these violations may not include misdemeanors or felonies;
2. establish schedules, within limits prescribed by law, of the judgments to be imposed for the first violations, designating each violation specifically;
3. order that the schedule of judgments be prominently posted in the place where the fines are paid;
4. establish a procedure under which any violations clerk or deputy violations clerk shall accept, receipt, and account for all money tendered for designated traffic violation; and

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TRAFFIC VIOLATIONS BUREAU (Continued)

5. dismiss deferred actions if a dismissal request is made under IC 34-4-32-1 (f) (IC 34-28-5-9)

If the court is a county court, the judge shall:

1. establish a traffic violations bureau in each county which the judge services;
2. appoint the clerk of the court to administer the traffic violations bureau; and
3. except at a state police unit, appoint the dispatcher on duty at every law enforcement unit within the county to be a deputy violations clerk charged with all of the duties of a violations clerk. (IC 34-28-5-10)

Any person charged with a traffic violation that is within the authority of the violations clerk may mail or deliver:

1. the amount of the judgment (including costs) indicated on the ticket; and
2. a signed:
 - A. admission of the violation; or
 - B. pleading of nolo contendere, if the action is for a moving traffic violation. (IC 34-28-5-11)

Before accepting a pleading admitting to a violation or entering a declaration of nolo contendere to a violation, the violations clerk or the officer writing the ticket shall inform the person that:

1. the person's signature to:
 - A. an admission of the violation; or
 - B. a pleading of nolo contendere will have the same effect as a judgment of a court; and
2. the record of judgment will be sent to the commissioner of motor vehicles of Indiana or the state where the person received a license to drive. (IC 34-28-5-12)

ARSON INVESTIGATION FINANCIAL ASSISTANCE FUND

The State Fire and Building Services Department administers an "arson investigation financial assistance fund." Authorization for this fund is found in IC 22-12-6-2. The statute states the fund shall be used to provide money to prosecuting attorneys, local police departments, the state police department, arson task forces, or fire departments that have arson investigation teams or arson task forces. It further requires the state fire marshal to distribute the money from the fund to these local officials in accordance with the rules adopted by the Fire Prevention and Building Safety Commission and the Commissioner of Insurance under IC 4-22-2.

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ARSON INVESTIGATION FINANCIAL ASSISTANCE FUND (Continued)

Receipt of the grant should have received prior approval of the legislative body of the county, the board of county commissioners. Grant receipts shall be accounted for by the fiscal officer. A separate fund should be established for accounting for the receipts and disbursements of this money. The fund shall be entitled "Arson Investigation Fund." The fund would not require appropriation, since the grant was not received as a reimbursement of expenditures.

FEDERAL AND STATE AGENCY TELEPHONE NUMBERS

Questions concerning federal and state withholding requirements, sales tax, fair labor standards act, unemployment taxes and pensions should be directed to the following listed agencies:

FEDERAL

Federal Wage and Hour Regulations

United States Department of Labor
Wage and Hour Division
46 East Ohio Street
Indianapolis, Indiana 46204
Telephone: 226-6772, Area 317

Federal Withholding and Social Security

Internal Revenue Services
575 North Pennsylvania Street
Indianapolis, Indiana 46244
Telephone: 226-5305, Area 317
Toll Free: 1-800-829-1040

STATE

State and County Withholding, Sales Tax and Other State Taxes

Indiana Department of Revenue
Indiana Government Center North
Indianapolis, Indiana 46204

State and County Withholding	(317) 233-4016
Sales Tax	(317) 233-4015
Gross Income Tax	(317) 232-2189
Gasoline Tax	(317) 615-2699

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FEDERAL AND STATE AGENCY TELEPHONE NUMBERS (Continued)

Unemployment Compensation

Department of Workforce Development
Employment Security Division
Room 113, 10 N. Senate Avenue
Indianapolis, Indiana 46204
Telephone: 232-7436, Area 317

Pensions

Executive Secretary
Public Employee's Retirement Fund
800 Harrison Building
Indianapolis, Indiana 46204
Telephone: 233-4162, Area 317

**PARKS AND RECREATION – NONREVERTING CAPITAL FUND
AND NONREVERTING OPERATING FUND**

I.C. 36-10-3-20 concerns establishment and use of a special nonreverting capital fund and states:

“(a) Upon the request of the board, the fiscal body of the unit may establish, by ordinance, a special nonreverting capital fund for the purposes of acquiring land or making specific capital improvements. The fiscal body may include in the board's annual budget an item and an appropriation for these specific purposes.

(b) Money placed in the nonreverting capital fund may not be withdrawn except for the purposes for which the fund was created, unless the fiscal body repeals the ordinance. The fiscal body may not repeal the ordinance under suspension of the rules.”

I.C. 36-10-3-22 relates to charging fees for park services and authorized establishing either/or a special nonreverting operating fund or a special nonreverting capital fund and states:

“(a) Park and recreation facilities and programs shall be made available to the public free of charge as far as possible. However, if it is necessary in order to provide a particular activity, the board may charge a reasonable fee.

(b) The unit's fiscal body may establish by ordinance upon request of the board:

(1) a special nonreverting operating fund for park purposes from which expenditures may be made as provided by ordinance, either by appropriation by the board or by the unit's fiscal body; or

(2) a special nonreverting capital fund for the purpose of acquiring land or making specific capital improvements from which expenditures may be made by appropriation by the unit's fiscal body.

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PARKS AND RECREATION – NONREVERTING CAPITAL FUND
AND NONREVERTING OPERATING FUND (Continued)

The unit's fiscal body shall designate the fund or funds into which the unit's fiscal officer (or county treasurer) shall deposit fees from golf courses, swimming pools, skating rinks, or other major facilities requiring major expenditures for management and maintenance. Money received from fees other than from major facilities or received from the sale of surplus property shall be deposited by the unit's fiscal officer (or county treasurer) either in the special nonreverting operating fund or in the nonreverting capital fund, as directed by the board. However, if neither fund has been established, money received from fees or from the sale of surplus property shall be deposited in the unit's general fund. Money from either special fund may be disbursed only on approved claims allowed and signed by the president and secretary of the board."

Official Attorney General Opinion No. 54 of 1965 states there is no expressed authorization by the legislature to the park board to expend the activity fees in the special nonreverting fund without prior appropriation, and such money cannot be disbursed without a prior appropriation ordinance having been adopted according to law by the city council, county council or town council.

Legislative intent was for the park special nonreverting operating fund to pay for park and recreation activities that were to be conducted on a self-supporting basis. (For instance, such activities as horse shoe tournaments, swimming meets, little league, arts and crafts, and other similar activities.) The special nonreverting capital fund was to be funded from an item within the park and recreation board's annual budget with an appropriation made for "these specific purposes". It was never suggested such activities should be undertaken in an effort to relieve local tax levies.

Notwithstanding apparent legislative intent, with the passage of the aforementioned statutes along with the authority provided in I.C. 36-1-3, Home Rule, we feel the county council has the authority to create by ordinance as many funds as they feel necessary to operate their unit. When nonreverting funds, capital or operating, are established properly pursuant to the statutes mentioned, no audit exceptions will be taken by the State Board of Accounts.

There are three situations that should be considered when creating the nonreverting funds.

(1) On diverting revenues from the Park Operating Fund to the new nonreverting funds, this will reduce the revenue available for funding operating fund expenditures.

(2) All expenditures from the nonreverting operating and/or nonreverting capital funds must have been authorized by the enabling ordinance(s) and prior appropriation(s) must be available. The appropriations need not go before the Department of Local Government Finance but do need approval by "the board or the unit's fiscal body" for the nonreverting operating fund and the "unit's fiscal body" for the nonreverting capital fund.

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CASH CHANGE FUND

IC 36-1-8-2 states:

“...(a) The fiscal body of a political subdivision may permit any of its officers or employees having a duty to collect cash revenues to establish a cash change fund. Such a fund must be established by a warrant drawn on the appropriate fund of the political subdivision in favor of the officer or employee, in an amount determined by the fiscal body without need for appropriation to be made for it.

(b) The officer and employee who establishes a cash change fund shall convert the warrant to cash, shall use it to make change when collecting cash revenues, and shall account for it in the same manner as is required for other funds of the political subdivision. (c) The fiscal body shall require the entire cash change fund to be returned to the appropriate fund whenever there is a change of the custodian of the fund or if the fund is no longer needed.”

A claim should be filed by the officer or employee designated by the fiscal body. The claim should contain a statement regarding the necessity for such fund together with the statutory reference (IC 36-1-8-2) authorizing its establishment. We do caution officials the amount advanced should not be greater than seems reasonably needed by the officer or employee.

PETTY CASH FUND

IC 36-1-8-3 states:

“...(a) The fiscal body of a political subdivision may establish a petty cash fund for any of its offices in a like manner to that prescribed by Section 2 of this chapter.

(b) The custodian of a petty cash fund shall use it to pay small or emergency items of operating expense. A receipt shall be taken for each expenditure and made from the fund. (c) The custodian of a petty cash fund shall periodically file a voucher, with all original receipts totaling the cash claimed expended being attached to it, so that the fund can be reimbursed for expenditures from it. Reimbursements must be approved and made in the same manner as is required for other expenditures of the political subdivision.”

A claim for expenditures must be prepared and filed for reimbursement to the petty cash fund. Such reimbursement shall be approved, allowed and paid in the same manner as other claims. If desired, for safeguarding funds and providing proper records, the petty cash fund may be maintained and accounted for through a separate bank account under jurisdiction of the responsible officer or employee with bank issued check forms used for all payments from the account. If this method is desired, it should have prior approval by ordinance of the fiscal body of the political subdivision.

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CONTRACTING IN EMERGENCY SITUATIONS

Whenever an emergency (defined in IC 5-22 and 36-1-12 as a situation that could not be reasonably foreseen and that threatens the public health, welfare, or safety and requires immediate action) exists that requires a purchase of materials or the construction, alteration or repair of any public work the following statutes are to be followed:

Public Purchase (IC 5-22-10-4)

“ A purchasing agent may make a special purchase when there exists under emergency conditions, a threat to public health, welfare or safety.”

Materials are defined to mean supplies, goods, machinery and equipment.

Public Construction (IC 36-1-12-9)

“ (a) The board, upon a declaration of emergency, may contract for a public work project without advertising for bids if bids or quotes are invited from at least two (2) persons known to deal in the public work required done.

(b) The minutes of the board must show the declaration of emergency and the names of the persons invited to bid or provide quotes.”

PROPERTY REASSESSMENT FUND INVESTMENTS

The county treasurer shall as provided by IC 6-1.1-4-28 invest any money accumulated in the property reassessment fund until the money is needed to pay reassessment expenses. Any interest received from the investment of this money shall be receipted into the property reassessment fund.

SOIL AND WATER CONSERVATION DISTRICT EMPLOYEES

IC 14-32-4-18 provides that employees of soil and water conservation districts shall be considered county employees in all counties except those containing a first class city. The employees will be eligible for and included in all fringe benefit programs for employees of that county.

An employee of a district whose position is funded entirely from sources outside the county in which the employee works solely on the basis of the funding of the employee's position is not considered an employee of the county.

Since employees of soil and water districts shall be considered county employees this will require these positions to be included in the salary ordinance and for the county council to appropriate sufficient general fund monies to pay these salaries and fringe benefits.

This will require the filing of form 99, Payroll Schedule and Voucher with the county auditor covering the soil and water conservation district employees certified by their supervisor. The county auditor will include these employees in their records, and reports in the same manner as other employees of the county.

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PAYMENT FOR SETTING GRAVE MARKERS

The amount authorized by IC 10-5-3-1 for setting grave markers provided by the federal government for the graves of deceased veterans is one hundred dollars (\$100.00).

DRAINAGE MAINTENANCE

IC 36-9-27-45 states, " A maintenance fund...is subject to the use of the board for the necessary or proper repair, maintenance, study or evaluation of the particular drain or combination of drains, which may be done whenever the board, upon the recommendation of the county surveyor, finds that it is necessary. The payment for all such maintenance work shall be made out of the appropriate maintenance fund. However, if:

- (1) A maintenance fund has not been established for the drain or combination of drains; or
- (2) A maintenance fund has been established but it is not sufficient to pay for the work; the general drain improvement fund shall be used to pay the cost of the work or to pay for the deficiency, and the general drain improvement fund shall be reimbursed from the appropriate maintenance fund when it is established or becomes sufficient."

APPROVAL OF FORMS

The Public Accounting Law (Chapter 55, Acts 1909, as amended, IC 5-11-1) provides that local governmental units shall use accounting forms prescribed by the State Board of Accounts. This law further provides that any officer who refuses to provide such books, forms or records, fails to use them or fails to keep the accounts of his office as directed by the board commits a class C infraction and forfeits his office.

Rule No. 8 of the State Board of Accounts provides as follows:

" The State Board of Accounts may, from time to time, approve minor alterations and changes in forms prescribed as provided by law upon application by units of government or the proper officer or officers thereof showing the need therefore. Any such approval of alteration or change of prescribed forms shall apply only to the specific approval and shall not be constructed as an authorization for general use."

A request for approval for use of non-prescribed forms should be submitted to this office in letter form signed by the proper officer or officers of the governmental unit and should be accompanied by three copies of each form proposed to be used.

Forms submitted should contain sample entries posted thereon. If the use of any form is not self-explanatory, a detailed procedure for the use of such form should be enclosed with the request for approval.

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TRIAL RULE 60.5 MANDATE OF FUNDS

(A) Scope of Mandate. Courts shall limit their requests for funds to those which are reasonably necessary for the operation of the court or court-related functions. Mandate will not lie for extravagant, arbitrary or unwarranted expenditures nor for personal expenditures (e.g., personal telephone bills, bar association memberships, disciplinary fees).

Prior to issuing the order, the court shall meet with the mandated party to demonstrate the need for said funds.

(B) Procedure. Whenever a court, except the Supreme Court or the Court of Appeals, desires to order either a municipality, a political subdivision of the state, or an officer of either to appropriate or to pay unappropriated funds for the operation of the court or court related functions, such court shall issue and cause to be served upon such municipality, political subdivision or officer an order to show cause why such appropriation or payment should not be made. Such order to show cause shall be captioned "Order for Mandate of Funds". The matter shall be set for trial on the merits of such order to show cause unless the legislative body, the chief executive officer or the affected officer files a waiver in writing of such a trial and agrees to make such appropriation or payment.

The trial shall be without a jury, before a special judge of the court that made the order. There shall be no change of venue from the county or from the special judge appointed by the Supreme Court.

The court shall promptly notify the Supreme Court of the entry of such order to show cause and the Supreme Court shall then appoint a judge or attorney to act a special judge. Such appointment shall be made from a panel of experienced and qualified judges and former judges maintained by the Court. The special judge shall not reside in the county in which the petition is to be tried nor in a county bordering on such county.

If the appointed judge fails to qualify within seven (7) days after he has received notice of his appointment, the Supreme Court shall follow the same procedure until an appointed judge does properly qualify.

Unless expressly waived by the respondent in writing within two (2) days after the entering of the trial judge's decree, a decree or order mandating the payment of funds for the operation of the court or court-related functions shall be automatically reviewed by the Supreme Court. Promptly on expiration of two (2) days' period, the trial judge shall certify such decree together with either a stipulation of facts or an electronic transcription of the evidence to the Supreme Court. No motion to correct error nor notice of appeal shall be filed.

No mandate order for appropriation or payment of funds made by any court other than the Supreme Court or Court of Appeals shall be effective unless it is entered after trial as herein provided and until the order has been reviewed by the Supreme Court or such review is expressly waived as herein provided.

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**ACCOUNTING PROCEDURES FOR THE EMERGENCY
TELEPHONE SYSTEM FUND (IC 36-8-16)**

Once the Enhanced Emergency Telephone Service (E911) fee is imposed by the fiscal body (County Council) of the county, it takes effect on the first day of the second month after the month during which the ordinance is adopted. The service supplier collects the fees on behalf of the county and is entitled to a three percent (3%) administrative fee. The service supplier shall remit the rest of the fees it collects during the calendar quarter to the Treasurer of the County within 10 days after the last day of the quarter.

<u>Quarter Ending</u>	<u>Date Due Treasurer</u>
March 31	April 10
June 30	July 10
September 30	October 10
December 31	January 10

NOTE: A service supplier that intentionally fails to collect or remit the fee commits a Class A infraction.

IC 36-8-16-11 requires the service supplier to apply a partial payment from a service user against the amount the service user owes the service supplier first. During January of each year, each service supplier is required to provide the County Treasurer with delinquent fee report. This report shall list the name and address and the amount of delinquent fees of each service user who is two (2) months delinquent in paying the fee. The service supplier has no obligation to take any legal action to enforce collection, however an action may be initiated by the unit that imposed the fees.

IC 36-8-16-13 requires the County Treasurer to deposit these fees to the _____ County Emergency Telephone System Fund. (Note the County Auditor will need to establish a new fund in the Funds Ledger entitled _____ County Emergency Telephone System Fund and receipt the fees to this fund by quietus each quarter.)

IC 36-8-16-14 states the fees shall be used only (our emphasis) to pay for:

- (1) the lease, purchase, or maintenance of enhanced emergency telephone equipment, including necessary computer hardware, software, and data base provisioning;
- (2) the rates associated with the services suppliers' enhanced emergency telephones system network services;
- (3) the personnel expenses of the emergency telephone system; and
- (4) the lease, purchase, construction, or maintenance of voice and data communications equipment, communications infrastructure, or other information technology necessary to provide emergency response services under authority of the unit imposing the fee.

The legislative body (our emphasis) of the unit may appropriate money in the fund only for such an expenditure.

Based on IC 36-8-16-14, which limits and specifically identifies the uses to which the County Emergency Telephone System Fund may be expended; any other expenses of a County Emergency Telephone (E911) Department would also need to be appropriated by the County Council **within a department of the County General Fund** (i.e. office supplies, and the purchase, repairs, or maintenance of office equipment and any other capital outlays). Some counties may wish to set up a specific department entitled E911 or may elect to include this within an existing department such as the sheriff's departmental budget.

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**ACCOUNTING PROCEDURES FOR THE EMERGENCY
TELEPHONE SYSTEM FUND (IC 36-8-16) (Continued)**

Basically all other laws which apply to a County would apply to both the new fund as well as the E911 Department within the County General Fund. (i.e. public purchase, public works, daily deposits, budget approval, setting of salaries and additional appropriations by the county council, submission of claims to county auditor and approval of claims by the county commissioners, and the county commissioners as the authorized contracting authority for the county,etc.)

FORFEITURES OF BONDS

Cash Bonds

The Clerk is required to withhold the following fees, costs, and or judgments from the amount on deposit before remitting to the County Auditor to deposit in the State Fines and Forfeitures Fund for remittance to the Auditor of State to be deposited in the Common School Fund:

1. If ordered by the Court, an administrative fee of ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is less.
2. Fines, costs, fees, and restitution as ordered by the court.
3. Publicly paid costs of representation. Within 30 days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk too remit the amount of the deposit to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund.
4. In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk may not be declared forfeited by the court, and the court shall order the deposited funds to be held by clerk and shall order all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

SURETY BONDS

In the case of a surety bond, which was declared forfeited by the judge, and the bondsman does not remit within one hundred twenty days of the mailing of the notice required in IC 27-10-2-12, a late surrender fee shall be assessed and calculated in the following manner:

<u>Number of Days After the Mailing of the Notice</u>	<u>Percentage of the Face Value of the Bond</u>
121 – 180 days	20%
181 – 210 days	30%
211 – 240 days	50%
241 – 365 days	80%

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SURETY BONDS (Continued)

If over 365 days, the court shall declare forfeited an amount equal to 20% of the face value of the bond and immediately enter judgment on the forfeiture and assess to the bondsman all actual costs resulting from the defendant's failure to appear (including jury fees, witness fees, and any other documented costs incurred by the court).

In the case of an insurer, if the fees, costs, or judgment are not paid, then the clerk shall mail notice to the commissioner (Insurance Commissioner). Under IC 27-10-2-12 (f) there are provisions to pay for late surrender fees, costs, and any judgment of forfeitures ordered by the court from funds the insurer has on deposit with the Department of Insurance.

The distribution of the Late Surrender Fees collected under IC 27-10-2-12 would be allocated as fifty percent (50%) deposited to the Police Pension Trust Fund, IC 36-8-10-12, and the other fifty percent (50%) of the Late Surrender Fee should be deposited to the County Extradition Fund established under IC 35-33-14. Any remaining bond forfeitures would be remitted to the State Common School Fund.

If the County General Fund is paying the pension trust employer costs we would recommend a Police Pension Fund be established to account for the late surrender fees and the county may take these fees into consideration when paying the County employer share of the police pension costs.

As you can see from this discussion, accounting for cash and bail bond funds can be very difficult. Because of this difficulty in determining when and if a fee would be charged it is very important for the judges and the clerk to work very closely together in administering and determining the appropriate disposition of these funds.